

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795 <div style="text-align: center; font-size: 24pt; font-weight: bold;">STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 10/08/2003 Item: 3.c.	
	File Number CP 03-036	
	Application Type Conditional Use Permit	
	Council District 4	
	Planning Area Berryessa	
	Assessor's Parcel Number(s) 587-10-005	

PROJECT DESCRIPTION	Completed by: Mike Mena
Location: Northeast corner of Sierra Road and Fujiyama Lane.	
Gross Acreage: 0.91	Net Acreage: 0.91 Net Density: N/A
Existing Zoning: CP Pedestrian Commercial	Existing Use: Small Retail/Commercial Uses
Proposed Zoning: None	Proposed Use: Wireless communications antenna (monopole) and an associated 141 square foot equipment enclosure

GENERAL PLAN	Completed by: MM
Land Use/Transportation Diagram Designation CG General Commercial	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING	Completed by: MM
North: U.S. Postal Service and Parking Lot	CP Pedestrian Commercial Zoning District
East: Gas Station	A(PD) Planned Development Zoning District
South: Single-Family Residential	A(PD) Planned Development Zoning District
West: Single-Family Residential	R-1 Single-Family Residence Zoning District

Completed by: MM	
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on _____ <input type="checkbox"/> Negative Declaration adopted on _____	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

FILE HISTORY	Completed by: MM
Annexation Title: Penitencia No. 3	Date: March 20, 1958

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision	Date: _____	Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation

OWNER	APPLICANT/DEVELOPER	CONTACT
Thomas Biggam P.O. Box 3102 Saratoga, CA 95070	Fred Haglund Cingular Wireless 4420 Rosewood Drive, Bldg 2, 3 rd Floor Pleasanton, CA 94588	Zachary Carter Ruth & Going P.O. Box 26460 San José, CA 95159

Department of Public Works

No comments received.

Other Departments and Agencies

See attached memorandum from the City of San José Fire Department

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Cingular Wireless, is requesting a Conditional Use Permit to install a new 45-foot tall wireless communications monopole and an associated 141 square foot equipment enclosure, at the rear of an existing retail/commercial building in the CP Pedestrian Commercial Zoning District. The Zoning Ordinance requires a Conditional Use Permit for installation of a wireless communication antenna/monopole in the CP Pedestrian Commercial Zoning District.

The monopole and associated equipment enclosure would be located on the northeasterly portion of the existing commercial property and would be partially screened by the existing commercial building from Fujiyama Lane and Sierra Road. The site is directly adjacent to a parking lot for the U.S. Postal Service and an existing gas station. Fujiyama Lane and Sierra Road separate the project site from single-family residences to the south and west of the project site. A temporary, building-mounted antenna was previously approved for testing purposes on the site under a Permit Adjustment (AD02-1359). This permit expired on June 17, 2003.

In 1996, San José planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, in that the project consists of only minor alterations to an existing structure which would not involve an expansion or intensification of the existing uses on the subject site. The primary environmental issue that must be analyzed for new monopoles is the potential for visual impacts. Because the project is located within an existing commercial area and would be partially screened by existing structures and the placement of street trees along Fujiyama Lane, this project does not have the potential of resulting in a significant visual impact. Noise specifications for the associated equipment is consistent with the performance standards set by the Zoning Ordinance for commercial zoning districts to maintain a maximum decibel level of 60 dBL at abutting commercial property lines.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of CG General Commercial in that wireless communication antennas/monopoles developed in conformance with the Zoning Ordinance and applicable City policy are considered an appropriate land use on commercial lands.

ANALYSIS

The key issues analyzed for the proposed project are conformance with the following: 1) Zoning Ordinance, and 2) City Council Policy 6-23 for Wireless Communication Facilities.

Conformance to the Zoning Ordinance

The Pedestrian Commercial Zoning District typically has a maximum height of fifty feet. The proposed new forty-five foot monopole is consistent with the Zoning District's height limit.

The referenced zoning district also requires a minimum rear setback of twenty-five feet, except where the rear property line abuts a commercial or less restrictive zoning district there is no rear setback requirement.

The proposed new monopole and equipment enclosure is located at the rear property line that abuts the adjacent commercial zoning district and is occupied by the U.S. Postal Service. In this case it is preferable to set the antenna as far back as possible on the site to increase the separation with the nearest residential development. The proposed monopole and equipment enclosure meets all other setback requirements in the Pedestrian Commercial Zoning District.

The proposed new monopole and associated equipment enclosure will be located within an existing landscaped area and will not result in the removal of any required parking stalls. Therefore, the proposed project is consistent with the applicable zoning district development standards.

Conformance to City Council Policy 6-23 for Wireless Communications Facilities

As part of its criteria for siting Wireless Communication Antennas, *the Land Use Policy for Wireless Communication Facilities* requires that new freestanding monopoles should be located no closer than 50 feet from any property with a residential use. The applicant's proposal is consistent with the Council Policy in that the proposed monopole would be located in excess of 200 feet from the nearest residential uses located across Fujiyama Lane and Sierra Road. Other surrounding properties are occupied and zoned for commercial uses.

The Council Policy also requires new wireless antennas to be located as to minimize visual impacts and to be architecturally integrated into the existing structure. It also requires ancillary equipment to be screened. Consistent with the Council Policy, the proposed project includes numerous measures that provide visual screening for the proposed antenna. The antenna itself would have a slim profile, only 13 inches in diameter and would be painted in colors to match the existing and adjacent utilities poles. The proposed antenna would be located within a new equipment enclosure at the rear of an existing commercial property and will be partially screened by the existing commercial buildings from the public right-of-way and from existing residences in the area. Because the proposed new monopole and associated equipment enclosure will not be fully screened from public and residential uses the applicant/developer will be required to install four street trees in the public right-of-way along Fujiyama Lane. The addition of the street trees will

improve the screening of the proposed monopole from public view.

CONCLUSION

For the reasons discussed above, staff concludes that the project is consistent with the Zoning Ordinance and the City Policy for wireless installations.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of CG General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CP Pedestrian Commercial Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
4. The project proposes permitting of a 45-foot tall communications antenna monopole adjacent to an existing industrial building.
5. The antenna is located in excess of 200 feet horizontally from adjacent single-family residences.
6. The proposed project will not eliminate required parking.
7. The subject Zoning District has a height limit of 50 feet.
8. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram designation and relevant urban design policies.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project substantially complies with the applicable criteria of the City Council Land Use Policy for Wireless Communications Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "SF-925 Modification Sierra Road, Cingular Wireless" dated July 7, 2003, and last revised on August 25, 2003, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The applicant must abate any such nuisance immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** This permit allows no new on-site lighting.
5. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
6. **Street Trees.** Three street trees shall be planted on the street frontage of Fujiyama Lane. Exact location will be determined at the time a permit for this is acquired from the Department of Streets and Parks, (408) 277-4373.
7. **Utilities.** All new on-site telephone and electrical service facilities shall be placed underground.
8. **Generators.** This permit does not approve any emergency/back-up generators on site. Any proposed emergency/back-up generators will require Planning approval.
9. **Colors and Materials.** All wireless communications antennas and screening colors and materials are to be those specified on the approved plan set and shall match the existing structure.
10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP03-036, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Archaeology.* Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

11. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
12. **Equipment Removal.** The applicant shall remove the wireless communications antennas and associated equipment enclosure from the site at such time as the equipment is no longer in use.
13. **Collocation.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennas on this tower. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this tower. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.